

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:

Krista D. Bruce

Case No. 17-54073-pjs
Honorable: Phillip J. Shefferly
Chapter 13

Debtor(s). _____/

**DEBTOR'S MOTION FOR VIOLATION OF THE AUTOMATIC STAY AGAINST
CREDITOR, FREEDOM MORTGAGE CORPORATION**

NOW COMES the Debtor, by and through her attorneys, MARRS & TERRY, PLLC and states as follows for the Motion for Violation of the Automatic Stay against Creditor, Freedom Mortgage Corporation:

1. The Debtor filed a Chapter 13 bankruptcy on October 6, 2017.
2. The plan was confirmed on June 18, 2018 with Creditor being paid as a Class 4.1 and 4.2 claim by the Trustee.
3. On February 16, 2019 Ms. Bruce made an insurance claim with State Farm for water damage done to her home.
4. State Farm issued a check to Ms. Bruce and the mortgage company in the amount of \$12,918.11. Both parties were to endorse the check. Ms. Bruce forwarded the check to Freedom Mortgage for endorsement so that she could use the same to make repairs to the home. Ms. Bruce did not endorse the check prior to sending it to Freedom Mortgage.
5. Freedom Mortgage endorsed and cashed the check without Ms. Bruce's endorsement and is now holding the funds and has indicated that it will be applied to the mortgage arrears.
6. Ms. Bruce filed a plan modification to allow her to retain all of her 2018 tax refund of \$7,075.00. Ms. Bruce prorated \$4500.00 on her Schedule I and sought to excuse the remainder of the refund to cover her insurance deductible for the repairs to the household plus any additional expenses. Ms. Bruce must remit paid in full receipts to the Trustee by August 1, 2019 to show the amount spent by her

on the repairs to the home or she must remit the remainder of the 2018 refund to the Trustee.

7. The Order Modifying Confirmed Plan was entered by this Honorable Court on April 26, 2019. Ms. Bruce cannot comply with this Order without receipt of the insurance money currently being held by Freedom Mortgage.
8. Ms. Bruce has contacted Freedom Mortgage regarding releasing the insurance proceeds to her but Creditor has refused to do so.
9. Counsel contacted Maria Tsagaris at McCalla Raymer Leibert Pierce LLC on June 24, 2019 regarding this matter. Counsel has received no response.
10. Pursuant to 11 U.S.C. §362(k) “an individual injured by any willful violation of a stay provided by this sections shall recover actual damages, including costs and attorney’s fees, and in appropriate circumstances, may recover punitive damages.”
11. Creditor’s refusal to remit the insurance proceeds to the Debtor for the needed repairs is a willful violations of the automatic stay and warrants punitive damages.
12. Debtor has been injured as she has not been able to complete the necessary home repairs and is unable to comply with the Order Modifying Plan entered on 4/26/19 by this Honorable Court due to the actions of the creditor which violated the automatic stay of 11 U.S.C. §362. Additionally, because of the attorney fees spent attempting to contact the Creditor, Debtors have incurred additional attorney fees.

WHEREFORE, the Debtor respectfully requests this Honorable Court:

1. Order Freedom Mortgage Corporation to pay reasonable attorney fees of Debtor’s counsel in the amount of \$2,000.00;
2. Order Freedom Mortgage Corporation to remit the insurance proceeds to the Debtor;
3. Order Freedom Mortgage Corporation to pay the Debtor the amount of \$5,000.00 in damages for their willful violation of the automatic stay;
4. Order Freedom Mortgage Corporation to pay \$5,000.00 in punitive damages as an appropriate deterrent; and
5. Grant any other relief it deems just and proper.

Dated: June 29, 2019

/s/ Michelle Marrs
Michelle Marrs (P59651)
MARRS & TERRY, PLLC
Attorneys for Debtor
6553 Jackson Rd., Ann Arbor, MI 48103
(734)663-0555/mmarrs@marrsterry.com

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**NOTICE OF DEBTOR'S MOTION FOR VIOLATION OF THE AUTOMATIC STAY
AGAINST CREDITOR, FREEDOM MORTGAGE CORPORATION**

The deadline to file an objection to the attached proposed Motion is 21 days after service.

If no timely responses are filed to a proposed Motion, the proponent may file a certificate of no response and request entry of an order approving the Motion.

If a timely objection is filed, the Court will set the matter for hearing and give notice of the hearing to the debtor, the proponent of the Motion, the trustee and any objecting parties. In that event, the Motion will become effective when the Court enters an order overruling or resolving all objections.

Objections to the attached Motion shall be served on the following:

Tricia S. Terry 6553 Jackson Rd Ann Arbor MI 48103

Krispen Carroll 719 Griswold, 1100 Dime Building Detroit MI 48226

Dated: June 29, 2019

/s/ Michelle Marrs
Michelle Marrs (P59651)
MARRS & TERRY, PLLC
Attorneys for Debtor
6553 Jackson Rd
Ann Arbor, MI 48103
(734)663-0555
mmarrs@marrsterry.com

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**ORDER GRANTING DEBTORS' MOTION FOR VIOLATION OF THE AUTOMATIC
STAY AGAINST CREDITOR, FREEDOM MORTGAGE CORPORATION**

Upon the reading and filing of Debtors' Motion for Violation of the Automatic Stay Against Creditor, Freedom Mortgage Corporation, which was presented to this Court pursuant to LBR 9014-1, and no objections having been filed to said Motion and a Certificate of No Response having been filed with the Court;

IT IS HEREBY ORDERED that Freedom Mortgage Corporation shall remit the State Farm insurance proceeds in the amount of \$12,918.11 to the Debtor; and

IT IS FURTHER ORDERED that Freedom Mortgage Corporation shall pay Debtor's Counsel \$2,000.00 for attorney fees; and

IT IS FURTHER ORDERED that Freedom Mortgage Corporation shall pay the Debtor the amount of \$5,000.00 in damages for their willful violation of the automatic stay; and

IT IS FURTHER ORDERED that Freedom Mortgage Corporation shall pay the Debtor \$5,000.00 in punitive damages as an appropriate deterrent.

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**PROOF OF SERVICE OF DEBTORS' MOTION FOR VIOLATION OF THE
AUTOMATIC STAY AGAINST CREDITOR, FREEDOM MORTGAGE
CORPORATION**

The undersigned certifies that on July 2, 2019 a copy of the Debtor's Motion for Violation of the automatic Stay Against Creditor, Freedom Mortgage Corporation, Notice of Motion, and Proof of Service of same, was served upon the following parties either electronically or by depositing said copies in the U.S. Mail, postage prepaid:

Freedom Mortgage Corporation
10500 Kincaid Drive
Suite 300
Fishers IN 46037

Maria Tsagaris
McCalla Raymer Leibert Pierce LLC
1544 Old Alabama Road
Roswell GA 30076

Respectfully submitted,

/s/ Michelle Marrs
Michelle Marrs (P59651)
MARRS & TERRY, PLLC
Attorneys for Debtor
6553 Jackson Rd
Ann Arbor, MI 48103
(734)663-0555
mmarrs@marrsterry.com